1124.

SUPREME COURT OF THE UNITED STATES.

No. 171.

JAMES B. GILMER, PLAINTIFF IN ERROR,

vs.

GEORGE POINDEXTER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	2
First document referred to in petition	4	3
Second document referred to in petition	5	4
Defendant's answer to petition	8	6
Citation and service	10	7
Argument closed, and cause submitted	12	8
Judgment	12	8
Motion for new trial, and reasons	13	9
Motion overruled	14	9
Order of court	15	10
Bill of exceptions	15	10
Petition for writ of error	40	24
Bond to prosecute writ	41	24
Certificates of clerk and judge	42	25
Citation and service	43	25
Writ of error	45	26
Assignment of errors	48	27

J. & G. S. Gideon, Printers.

Pleas and proceedings before the honorable the circuit court of the United States, for the fifth circuit and district of Louisiana, at a circuit court continued and held at the city of New Orleans, in the district aforesaid, on the twenty-eighth day of June, in the year of our Lord one thousand eight hundred and forty-eight, and the seventy-second year of the American independence, in a suit wherein George Poindexter is plaintiff, and James B. Gilmer is defendant.

Be it remembered, that on the twentieth day of February, A. D. 1847, came the complainant, by Logan Hunton, esq., his solicitor, and filed in the clerk's office of said circuit court of the United States, for the district of Louisiana, the following petition in writing, to wit:

To the honorable the judge of the circuit court of the United States, for the district of Louisiana.

The petition of George Poindexter, who is a citizen of the State of Kentucky, respectfully shews, that by an act of the Congress of the United States, approved the 30th day of May, 1834, entitled "An act granting to General *Pilomen* Thomas, of Louisiana, a tract of land in consideration of the military services rendered by him in taking possession of that portion of West Florida, included in the district of Baton Rouge;" the said Thomas was authorized to enter without payment two sections of land on any of the lands of the United States in the State of Louisiana.

And the said Thomas, on the 30th day of January, 1835, sold to petitioner, then of the State of Mississippi, his right of entry by virtue of that act of Congress, and to complete the location the said Thomas authorized petitioner, or any substitute appointed by him, to make the location in the name of him, the said Thomas.

And afterwards, the said petitioner caused the said location to be made on two sections of the lands of the United States, situate in the State of Louisiana, north of Red river, in the district of lands subject to sale at Natchitoches, one section of which was described as follows, namely:

Fractional section thirteen, in township nineteen north, of range fourteen west; and fractional section fourteen, in township nineteen north, of range fourteen west; and fractional section eleven, in township thirteen north, of range fourteen west; and the southwest fractional quarter of section twelve, in township nineteen north, of range fourteen west; and lot number four, of fractional section one, in township nineteen north, of range fourteen west, containing six hundred and forty-nine acres and thirty-six hundredths of an acre.

And after the said location was so made, to wit, on the 27th day of November, in the year 1840, the said Philemon Thomas, by act before Charles B. Tessier, a notary public, duly commissioned for the parish of East Baton Rouge, (a copy of which is herewith filed,) for the pur-

pose of perfecting the title of the said Poindexter, your petitioner transferred to him all the right, title, interest, and claim, which he, the said Thomas then had, or might thereafter have, to the said sections of land, located as aforesaid, and authorized petitioner to obtain a patent for the same in his own name from the United States.

Petitioner further shews, that on the 26th day of March, in the year 1841, a patent from the United States was issued, and granted to the said General Philemon Thomas for the said lands, a copy of which is herewith filed; by virtue of which patent, and the sale and transfer above mentioned, petitioner became, and was, and is now, the legal owner and proprietor of the said parcels of land above described, and is justly entitled to the possession thereof.

Petitioner further shews, that James B. Gilmer, who is a citizen of the State of Louisiana, residing in the parish of Bossier, although he well knows the petitioner to be the owner of the said parcels of land above described, situate as aforesaid in township nineteen north, of range 14 west, has unlawfully taken possession of the same, and your petitioner is informed the said Gilmer pretends to have some title or claim thereto.

Petitioner has amicably demanded possession of the same from the said Gilmer, but he refuses to deliver it.

Wherefore, in consideration of the premises, petitioner prays that the said James B. Gilmer may be cited to appear and answer this petition, and exhibit his title to said land, if any he has. And, upon final hearing, petitioner prays that said parcels of land above described may be by the decree of this honorable court adjudged to belong to petitioner, and that the said Gilmer be required to surrender the possession thereof, and that said Gilmer be condemned to pay petitioner five thousand dollars for rents and profits of said land during his occupancy of the same.

And that such other orders and decrees may be made as the justice of his case may require.

LOGAN HUNTON, *for petitioner.*

I acknowledge service of the within.
February 20th, 1847.

JAMES B. GILMER.

1st document referred to in and filed with petition.

STATE OF LOUISIANA,
Parish of East Baton Rouge. } No. 59, copy.

Whereas, on *on* the thirtieth day of January, 1835, General Philemon Thomas, of this parish, for valuable consideration to him in hand paid, sold and conveyed to me, George Poindexter, of the State of Mississippi, his right of entry without payment, two sections of land on any of the lands of the United States, in the State of Louisiana, granted to the said Phila. Thomas by an act of Congress passed in the year 1834. And whereas, in order to complete the said location, the said Philemon Thomas executed to the said George Poindexter a power of attorney,

with the right of substitution, authorizing the said location to be made in the name of him, the said Philemon Thomas; which location, according to the tenor and effect of the said power of attorney, was made on two sections of the lands of the United States in township 18 N., range 10 west, and in township 19 N., range thirteen and fourteen west.

Now, therefore, in order to enable the said George Poindexter to perfect his title by withdrawing from the land office at Natchitoches the final certificate of said location, he, the said Philemon Thomas, hereby, for himself, his heirs, executors, and administrators, transfer to the said George Poindexter, his heirs, executors, and administrators, all the right, title, interest, and claim which he, the said Philemon Thomas, has or hereafter may have, in and to the two sections of land located as aforesaid in the name of said Philemon Thomas, and further does authorize the said Geo. Poindexter to obtain a patent for the lands so located in his own name at the General Land Office of the United States at the city of Washington.

And the said George Poindexter, being here present, accepts this transfer made in his favor.

In witness whereof the parties have hereto set their hands with me, Charles R. Tessier, a notary public, duly commissioned and sworn, for said parish, and in presence of Raphael Legendre and Victor Allain, witnesses duly qualified at Baton Rouge, this 27th day of November, eighteen hundred and forty.

(Signed) PHIL'N THOMAS,
GEO. POINDEXTER.

R. LEGENDRE,
VR. ALLAIN.

CHS. R. TESSIER, *Notary, Public.*

I certify the foregoing to be a true copy of the original act on record, in book A, folio 43, formerly of Charles R. Tessier, notary public, and now in my possession and in my office.

In testimony whereof I have hereto set my hand and affixed my seal of office at Baton Rouge, this twentieth day of May, A. [L. S.] D. eighteen hundred and forty-six, (1846.)

MANUEL MORENO, *Not. Pub.*

2d document, referred to in and filed with petition.

The United States of America, to all to whom these presents shall come, greeting:

Know ye, that there has been deposited in the General Land Office a certificate, numbered two thousand and forty-six, of the register of the land office at Natchitoches, Louisiana, whereby it appears that the claim of General Philemon Thomas, by virtue of the act of Congress approved the thirtieth day of June, one thousand eight hundred and thirty-four, entitled "An act granting to General Philemon Thomas, of Louisiana, a tract of land in consideration of the military services

rendered by him in taking possession of that portion of West Florida included in the district of Baton Rouge," has been located so as to include the following described lands, subject to sale at Natchitoches, Louisiana, namely: fractional section thirteen, in township nineteen (north,) of range fourteen west; fractional section fourteen, in township nineteen (north,) of range fourteen west; fractional section eleven, in township nineteen (north,) of range fourteen west; the southwest fractional quarter of section twelve, in township nineteen (north,) of range fourteen west; the northwest fractional quarter of section twelve, in township nineteen (north,) of range fourteen west; and lot number four, of fractional section one, in township thirteen (north,) of range fourteen west; containing, together, six hundred and forty-nine acres and thirty-six hundredths of an acre; also fractional section seven, in township eighteen (north,) of range thirteen west; and fractional section six, in township eighteen (north,) of range thirteen west; containing, together, six hundred and fourty-four acres and fourteen hundredths of an acre. There is, therefore, granted by the United States unto the said General Philemon Thomas, and to his heirs, the tracts of land above described, to have and to hold the said tracts, with the appurtenances, unto the said General Philemon Thomas, and to his heirs and assigns forever.

In testimony whereof I, William Henry Harrison, President of the United States, have caused these letters to be made patent, [L. S.] and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the United States the sixty-fifth.

By the President: W. H. HARRISON,
By N. P. CAUSIN, Jr., *Sec'y.*

(Signed) J. WILLIAMSON,
Recorder of the General Land Office.

Recorded, vol. C, page 106.

GENERAL LAND OFFICE.

I, James Whitcomb, Commissioner of the General Land Office, do hereby certify, that the within is a true copy from the records of this office.

In testimony wherof I have hereunto subscribed my name and caused the seal of the said office to be affixed, at the city of Washington, the twenty-ninth day of March, 1841.

(Signed) JAS. WHITCOMB, *Commissioner.*

LAND OFFICE, *at Natchitoches, La.*

I, William T. Walmsley, register of the land office at Natchitoches, La., do hereby certify, that the foregoing is a true copy of a copy on file in my office.

Given under my hand and seal of office, this 24th day of [L. S.] December, A. D. 1844.

WM. T. WALMESLEY, *Register.*

Afterwards, to wit, on the 31st day of March, A. D. 1847, the said defendant by his attorneys, Barker and Upton, filed, in the clerk's office of the said court, his answer to the said petition, in the words and figures following, to wit:

To the honorable the judges of the circuit court of the United States, for the fifth circuit, holding sessions in New Orleans and district of Louisiana.

The answer of James B. Gilmer, of Claiborne parish, State of Louisiana, to the petition herein filed.

He denies all and singular the averments of the plaintiff's petition. He says that the plaintiff has no right, title, or interest to the said land. That he, the defendant, this respondent, has long been in quiet and notorious possession of said land; has openly cultivated the same, to the knowledge, as he believes, of the petitioner; and has made valuable improvements thereto—placed costly buildings thereon.

That the defendant is not bound to further or other answer herein, for that the plaintiff has exhibited no right to disturb his, the defendant's, possession. And of this he prays the judgment of your honors.

And if it be that the defendant is held to other and further answer, then, and not otherwise, he avers and shews that he is the possessor and true owner of the land described in the plaintiff's petition, by virtue of his purchase in good faith, and for a valid consideration, from James W. Patton, of Buncombe county, North Carolina, as fully appears by public act passed before Lucien Herman, notary public of this city of New Orleans, dated on the 28th day of March, 1844, which act was passed by James Erwin, the duly authorized and empowered agent and attorney in fact of said James W. Patton.

That the improvements, the buildings, fences, clearing, cultivation, and ditching, which the defendant has made upon the said land since his purchase thereof from said James W. Patton, by and through his agent aforesaid, James Erwin, have been in the cost and value of twenty-five thousand dollars. That the occupancy and cultivation thereof by the said defendant has greatly enhanced its value; while, at the same time, no considerable or valuable return, or income, no rents and profits, have been made or received. That, relying upon the sufficiency of his title, the defendant has been put to great charge and cost in the buildings and improvements upon said land, with the view and hope of future profits.

That in the act of sale aforesaid of the said James W. Patton, by and through his agent aforesaid, the said James W. Patton did covenant and agree to warrant and defend the title to the said land to be in him, and did covenant and agree to hold your respondent quiet and safe in his possession, and to keep him ever free from any and all claims made thereto or thereon by any person whatever.

That by virtue of the said act of sale, and by virtue of the purchase aforesaid, your petitioner has now the right to call in warranty the said James W. Patton, and to have him cited in warranty to defend him, your respondent, from the claims and pretensions of your petitioner.

Wherefore, will it please your honors that citation issue to the said James Washington Patton, and that he be cited by and through his agent, James Erwin; and if the said James Erwin be [no] longer the agent of the said James W. Patton, that your honors will appoint a curator ad hoc for him.

That the plaintiff's claim may be dismissed as not well brought; and if your honors do decree any judgment in favor of the petitioner, and against the respondent, then that the respondent, James B. Gilmer, may have the same judgment and decree in his favor against the said James W. Patton, and that the said J. W. Patton be ordered to repay and refund to your petitioner the sums already paid him towards the full purchase of said land, viz., the sum of six thousand four hundred and ninety-three dollars [and] sixty cents, with interest; and that the decree being in favor of the plaintiff for possession of the land aforesaid, shall not be entered up or executed until the defendant shall have first received payment for the improvements, &c., &c., and for the enhanced value which he, the defendant, has given and added to the said land.

That your honors will make the usual and necessary orders herein, and grant general relief.

All of which, &c.

By R. H. BARKER,
WHEELOCK S. UPTON,
Of counsel for defendant.

And afterwards, to wit, on the 1st day of April, A. D. 1847, the following citation was issued on said answer:

The President of the United States of America, to the marshal of the district of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to summon James Washington Patton, a citizen of North Carolina, through his agent, James Erwin, citizen of the State of Louisiana, to comply with the demand of James B. Gilmer, citizen of the State of Louisiana, contained in the answer and call in warranty, of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of May, 1847.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States of America, at the city of New Orleans, in the said District of Louisiana, this first day of April, in the year of our Lord one thousand eight hundred and forty-seven, and of the independence of the United States of America the 71st year.

[L. S.]

F. N. HARALSON, *D'y Clerk.*

Marshal's return.

Received this 1st day of April, 1847, and on the same day served copies of the within citation, answer, and call in warranty on the within named James Erwin, in the following manner, to wit, by handing the same to him in person at New Orleans. Returned April 1st, 1847.

CHS. A. LABREZAN,
D'y U. S. Marshal.

Afterwards, to wit, on the 1st day of May, A. D. 1848, the trial of this cause being assigned for that day, appeared the respective parties, by their counsel, L. Hunton, esq., for the plaintiff, and W. S. Upton for the defendant; when, after hearing the evidence and argument of counsel on behalf of the plaintiff, the further trial of this cause was continued until to-morrow at 12 o'clock, M., to enable the defendant to be heard.

Afterwards, to wit, on the 3d day of May, 1848, this cause again came on; and it is ordered that the testimony of John McCollom, a witness for petitioner, be taken in writing, by Robert Lusher, a United States commissioner, to be read in evidence on the trial of this cause.

Afterwards, to wit, on the 4th day of May, 1848, this cause was resumed before the court, when the evidence on both sides closed, and the argument thereon opened; whereupon, after some progress, the further trial of said cause was continued until to-morrow at 9 o'clock, A. M.

Afterwards, to wit, on the 5th day of May, A. D. 1848, the trial of this cause being resumed before the court, whereupon the evidence and argument of counsel having closed, the cause was submitted; when the court took the same under advisement.

Afterwards, to wit, on the tenth day of May, 1848, this cause having been argued and submitted at a former day of the present term, and the court having maturely considered the same on the law and the evidence, and being now fully advised in the premises, it is ordered, adjudged, and decreed, that judgment be rendered in favor of the plaintiff, George Poindexter, and against the defendant, James B. Gilmer, for the premises described in the plaintiff's petition; that the said Gilmer surrender to the plaintiff the possession of the following described parcels of lands, to wit: fractional section No. 13, in township 19 north, of range 14 west; and fractional section 14, in township 19 north, of range 14 west; and fractional section 11, in township 19 north, of range 14 west; and the southwest fractional $\frac{1}{4}$ section 12, in township 19 north, of range 14 west; and lot No. 4 of fractional section one, in township 19 north, of range 14 west, containing 649 acres $\frac{44}{100}$ of an acre; and that plaintiff have writ of *habere facias possessionem*, to place him in legal possession thereof. The right of plaintiff to sue for mesne profits, and of defendant to sue for improvements, is reserved to each separately. And it is further ordered, that defendant be condemned to pay the costs of suit.

Afterwards, to wit, on the 13th day of May, A. D. 1848, on motion of W. S. Upton and R. H. Barker, of counsel for defendant, it is ordered by the court that plaintiff do shew cause, on Saturday, the 20th instant, at 9 o'clock, A. M., why the judgment herein rendered should not be set aside and a new trial granted, for this:

1st. That said judgment is contrary to law and evidence.

2d. That, on the trial of this cause, the defendant herein was ready, and through his counsel offered the testimony of witnesses then in court, to prove the value of the improvements made by defendant on the land mentioned in plaintiff's petition and in controversy in this cause, which testimony was intended to support defendant's plea in reconvention in this cause; which testimony the court then refused to receive.

3d. That the court received and admitted in evidence, notwithstanding the objection of defendant's counsel, a paper, purporting to be articles of partnership between plaintiff herein and one Felix Huston, purporting to bear date on the 20th of November, 1835, and to have been made in the State of Mississippi; which paper was not proved to have been executed at said time, nor indeed proved to have been executed at all, except by proof of the handwriting of said Huston.

4th. That, on the trial of this cause, the court received and admitted in evidence a paper, purporting to be a transfer from Philemon Thomas to plaintiff herein, and to bear date November 27th, 1841, and to have been executed and passed before Charles R. Tessier, a notary public in and for the parish of East Baton Rouge; which said paper was objected to by defendant's counsel, as not being proved.

5th. For other errors apparent on the face of the record.

Afterwards, to wit, on the 22d day of May, A. D. 1848, the motion herein made by defendant on the plaintiff, to shew cause why a new trial should not be granted herein, was this day taken up and argued by counsel; when, the same being submitted, the court took time to consider.

Afterwards, to wit, on the 15th day of June, A. D. 1848, the motion herein made by the defendant for a new trial in this cause having been argued and submitted at a previous day of this term, and the court having maturely considered the same, doth now order and adjudge that the said motion for a new trial be, and the same is hereby, overruled at defendant's costs.

Afterwards, to wit, on the 22d day of June, A. D. 1848, on motion of Upton and Barker, of counsel for defendant, it is ordered, that plaintiff do show cause, on Friday, the 23d instant, at 9 o'clock, A. M., why defendant should not be allowed to amend his motion and grounds for a new trial taken herein, by inserting therein the evidence adduced by plaintiff and defendant respectively on the trial of this cause.

Afterwards, to wit, on the 27th day of June, A. D. 1848, on motion of R. H. Barker, esq., counsel for defendant, the documentary evidence offered by plaintiffs and defendants on the trial hereof not having been marked filed by the clerk at the time it was introduced, it is ordered by

the court that said documentary evidence be filed nunc pro tunc, and made part of the record hereof, which is accordingly done.

Afterwards, to wit, on the day and year last aforesaid, the rule by defendant entered on Thursday last against the plaintiff coming on for hearing, and Barker, of counsel for defendant, and Huston for plaintiff, being heard thereon, it is ordered by the court that said rule be disallowed and overruled.

Afterwards, to wit, on the day and year last aforesaid, the defendant, by his counsel, Barker, tendered the following bill of exceptions, which was signed and filed in open court, to wit:

Be it remembered, that, on the trial of this cause, plaintiff offered in evidence a paper purporting to be articles of agreement between plaintiff and one Felix Huston, and to have been signed and sealed by them, and purporting to bear date November 20th, 1835; said paper also purported to have been signed by one Wm. Burns as subscribing witness. No testimony was offered as to the sealing or delivery of said paper, or the time when it was made; the subscribing witness was not called to testify, but a witness was examined, who testified that the names of said Poindexter and Huston, subscribed to said paper, were in the handwriting of said parties. Witness knew nothing of the execution of said instrument. Defendant, by his counsel, objected to the reception of said paper in evidence, on the ground that there was no proof whatever of the time when it was signed, nor of the sealing and delivery of the same. Defendant objected also to the admissibility of said paper in evidence, even if the due execution thereof were duly proved, on the ground that it was a private act, not recorded, to which defendant was not a party, or of which he had notice; and, on the further ground, that the effect of said paper in evidence would be to contradict, qualify, and explain the positive and direct admissions of plaintiff made in his conveyance, by authentic act, to said Huston, on the 20th day of November, 1835; which said authentic act of conveyance had been offered in evidence by the defendant. The objections of defendant were overruled by the court, and the paper received in evidence; to which defendant, by his counsel, excepts.

Be it further remembered, that, on the trial of this cause, defendant offered to introduce testimony to prove the value of the improvements made by him upon the land in controversy in support of his answer and plea in reconvention; the court refused to receive or hear said testimony; to which refusal defendant, by his counsel, excepts, and tenders this his bill of exceptions, and prays that the same may be signed.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

The following is the documentary evidence filed 28th day of June, A. D. 1848, as of the day on which it was offered in evidence on the trial, being documents marked A, B, C, D, E, F, and G:

Document A.

This indenture, made this 30th day of January, in the year of our Lord one thousand eight hundred and thirty-five, between Philemon Thomas, of the State of Louisiana, of the one part, and George Poindexter, of the State of Mississippi, of the other part, witnesseth: That whereas an act of Congress of the United States, approved June 30th, 1834, granted to the said Philemon Thomas, without payment, the quantity of twelve hundred and eighty acres of land, to be located on any of the lands of the United States in the State of Louisiana, at the proper land office, with the proviso, that the same shall be located in tracts of not less than six hundred and forty acres, according to legal subdivision. Now, therefore, the said Philemon Thomas, of the first part, hath, for and in consideration of the sum of seven thousand five hundred dollars, to him in hand paid, before the sealing and delivery of these presents, by the said George Poindexter, granted, bargained, and sold, unto him, the said George Poindexter, his heirs and assigns, forever, all the right, title, interest, and claim whatsoever which he, the said Philemon Thomas, may have, or might hereafter have, in and by virtue of the recited act of Congress; and the said Philemon Thomas doth hereby authorize and empower the said George Poindexter to make the location or locations of the said twelve hundred and eighty acres of land for his own proper use and benefit, or proper use and benefit of his heirs or assigns, in the same manner, and with the same effect, as he, the said Philemon Thomas, might have done in his own name if this conveyance had not been made.

In testimony whereof the said Philemon Thomas hath hereunto set his hand and affixed his seal, at the city of Washington, on the day and year first above written.

Signed, PHIL. THOMAS.

Signed, sealed, and acknowledged in presence of—
SAMUEL R. ADDISON,
L. H. MACHIRE.

Witness: JOS. MCLANE.

DISTRICT OF COLUMBIA, *Washington city, to wit:*

Be it remembered, that on this sixth day of March, in the year one thousand eight hundred and thirty-five, before me, the subscriber, one of the justices of the peace of said District, in and for the county aforesaid, appeared Philemon Thomas, party to the within indenture, and acknowledged the same indenture to be his act and deed.

Taken and certified by—

B. K. MORSELL, *J. P.*

DISTRICT OF COLUMBIA, *county of Washington:*

I, Wm. Brent, clerk of the circuit court of the District of Columbia for the county of Washington, hereby certify, that Benjamin K. Morsell, esq., before whom the above acknowledgment was made, and who has thereto subscribed his name, was, at the time thereof, and still is,

a justice of the peace in and for the county and district aforesaid, duly commissioned and qualified.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at the city of Washington, this 17th day of March, A. D. 1835.

W. BRENT, *Clerk.*

Received the fourteenth day of March, 1835, to be recorded, and the same day was recorded, in liber N B, No. 51, folios 267 and 268, one of the land records of the county of Washington, in the District of Columbia, and examined by W. Brent, clerk.

SURVEYOR GENERAL'S OFFICE, DONALDSONVILLE.

Received in this office, 28th November, 1835, and withdrawn after being copied.

H. T. WILLIAMS,
Surveyor General.

STATE OF LOUISIANA, *East Baton Rouge:*

Before me, Charles Verrier, parish judge and ex officio notary public for said parish, do hereby certify, that the foregoing conveyance from Gen'l Philemon Thomas to Geo. Poindexter was duly acknowledged before me by said Thomas.

In testimony whereof I have hereunto set my hand and public seal, this 23d December, 1835.

CHS. VERRIER, *J. P. and Not. Pub.*

(Signed) PHILEMON THOMAS.

Witness—

WRIGHT CONVERSE,
JOHN PARMLY.

STATE OF LOUISIANA, *parish of Claiborne:*

I, George W. Peets, parish judge, in and for said parish of Claiborne and State of Louisiana, do hereby certify, that the foregoing deed of sale, to which this certificate was attached, has been duly recorded, together with this certificate thereof, in my office, in notarial book marked C, folios 306 and 307, on this 13th day of February, A. D. 1840.

In faith whereof I have hereunto set my hand and affixed the seal of my office, this 13th day of February, 1840.

GEORGE W. PEETS, *Parish Judge.*

STATE OF LOUISIANA, *parish of Bossier:*

I do hereby certify the within to be a true copy of the original instrument on file and of record in my office, in the town of Belleview.

Given under my hand and seal officially, February 25, A. D. 1847.

J. C. G. REY, *Parish Recorder.*

Document B.

Articles of agreement made and entered into, this twentieth day of November, A. D. 1835, between George Poindexter and Felix Huston, both of the State of Mississippi, witness:

That the parties aforesaid have this day entered into partnership for the purpose of purchasing the lands of the United States at public and private sales, or pre-emption rights, or entries of individuals, for their joint and mutual benefit, on the following terms and conditions, to wit: That whereas the said George Poindexter having purchased of General Philemon Thomas, of Louisiana, his right to locate the quantity of twelve hundred and eighty acres of land on any of the public lands in the State of Louisiana, granted to him by an act of the Congress of the United States passed on the 30th June, 1834, and having obtained from said Thomas a conveyance, bearing date the 30th January, 1835, of his said right of entry, which yet remains unlocated, the said Poindexter agrees to convey to the said Felix Huston his right of entry derived under said deed, in the same manner as he acquired the same from the said Philemon Thomas, so that the said entry may be made in the name of the said Felix Huston, to be held by him for the joint and equal benefit of him, the said Felix Huston, and the said George Poindexter; the said Felix Huston agreeing, on his part, to purchase pre-emption floats, or otherwise apply to the purchase of public lands, the sum of eight thousand dollars in his own name, which lands, so entered or purchased, shall be held by him, the said Huston, for the joint and equal benefit of the said Huston and Poindexter, their heirs, executors, or administrators, in the same manner that he binds himself to hold the land to be located under the Thomas grant for the joint and equal use and benefit of each; the same being in consideration of the transfer of the said Poindexter of the one-half of the grant purchased by him of the said Philemon Thomas at the price of eight thousand dollars, including the expenses incident to location.

And for the further purpose of enabling them to locate public lands as far as their means will permit them, the parties aforesaid agree to obtain from any bank or banks in the State of Mississippi, in their joint names, such sum or sums of money as may, from time to time, be required in making locations or entries, or purchases of floats or pre-emption rights; all which entries and purchases, whether the same be made in the State of Louisiana or Mississippi, shall be in the name of the said Felix Huston, who has full authority to sell and dispose of any tract or tracts of land which may be located as aforesaid, either for ready money or on credit, at his discretion, the purchase money being well secured for the joint benefit of the parties aforesaid, their heirs, executors, and administrators. The said Poindexter is not to be at liberty to sell, or to contract for the sale, of any tract or tracts of land which may be entered as aforesaid without previous consultation with the said Huston. And in case the parties cannot agree respecting the terms of sale of any such tract or tracts of land, the same shall be par-

titioned, according to quality and quantity, between the said parties, their heirs, executors, or administrators.

This article of agreement may be cancelled at any time by either party desiring to withdraw from the concern, on giving one month's previous notice to the other; it being understood that all antecedent acts shall remain subject to this agreement in the same manner as if it remained in force.

And in case the said Poindexter should die leaving the whole or any part of his moiety of lands which may be acquired under this agreement undisposed of, the said Huston binds himself, his heirs, executors, or administrators, to convey such moiety, so undisposed of at the *the* time of the death of the said Poindexter, to Ann Poindexter, in case it should happen, wife of said George Poindexter, or to such other person or persons as he may designate by last will and testament; and in case the said Ann Poindexter should depart this life, after the decease of the said George Poindexter, before said conveyance is executed, then the same shall be conveyed to such person or persons as she may by last will and testament direct; it being understood that the proceeds of the sales of lands acquired under this agreement, which shall not have been collected and paid over to said Poindexter before his decease, shall enure to the benefit of the said Ann Poindexter, or the person to whom the said George Poindexter may will the same, in the same manner as the land undisposed of would under this agreement.

It is further understood that all expenses incurred in the execution of this agreement shall be a mutual and equal charge on the parties.

In testimony whereof the parties aforesaid hereto set their hands and affix their seals the day and date first above written.

(Signed duplicates) FELIX HUSTON, [SEAL.]
GEO. POINDEXTER. [SEAL.]

Witness—Wm. Burns.

All the foregoing agreement is annulled by consent of parties, except so far as relates to the Thomas grant, and the $8000 to be vested in lands by said Huston; and so far as relates to said $8000, said Huston is not to enter lands to that amount, but is to pay to said Poindexter $4000, or to deliver to Wm. Burns floats to that amount, except costs.

FELIX HUSTON,
GEO. POINDEXTER.

March 8th, 1836.

Document C.

State of Louisiana, *parish of Concordia, ss:*

Be it remembered that, on this twentieth day of November, A. D. eighteen hundred and thirty-five, before me, George W. Keeton, a notary public in and for the said parish, duly commissioned and sworn, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared George Poindexter, of the State of Mississippi, who declared and said, that for and in consideration of the sum

of eight thousand dollars, to him in hand paid by Felix Huston, of the city of Natchez, of the State last aforesaid, the receipt whereof is hereby acknowledged; he, the said George Poindexter, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth grant, bargain, sell, convey, and confirm, unto the said Felix Huston, his heirs and assigns forever, all the right, title, interest, and claim whatsoever, which he, the said George Poindexter, has or heretofore may have had, or might hereafter have, in and by virtue of an act of Congress of the United States, approved June 30th, 1834, granted Philemon Thomas, without payment, the quantity of twelve hundred and eighty acres of land, to be located on any of the lands of the United States within the State of Louisiana, at the proper land office, with a proviso, that the same shall be located in tracts of not less than six hundred and forty acres, according to legal subdivisions; which said land was conveyed *to* the said Philemon Thomas to the said George Poindexter, by indenture entered into on the thirtieth day of January, A. D. 1835; which is of record in the district court for the county of Washington, in the District of Columbia. And the said George Poindexter doth hereby authorize and empower the said Felix Huston to make the location or locations of the said twelve hundred and eighty acres for his own proper use and benefit, or the proper use and benefit of his heirs and assigns, in the same manner and with the same effect as he, the said George Poindexter, might have done in his own name, by virtue of the said act of indenture from the said Philemon Thomas to the said George Poindexter. And the said Felix Huston being present, declares that he accepts this act with all its clauses.

Done and passed at my office, in the town of Vidalia, the day, month, and year above written, in presence of Edward Sparrow and William L. Poindexter, witnesses, residing in this parish, who have signed this act with the parties, and me, the said notary.

(Signed) GEO. POINDEXTER,
FELIX HUSTON.

EDW. SPARROW,
WM. L. POINDEXTER.

G. W. KEETON, *Notary Public*.

I certify the foregoing to be a true copy of the original act now on file in my office.

In testimony whereof I have hereunto set my hand and notarial seal of office, this twentieth day of November, A. D. 1835, at Vidalia.

G. W. KEETON, *Notary Public*.

NORTHWESTERN LAND OFFICE,
January 28*th*, 1840.

Received in this office on the 14th June, 1839, and withdrawn after being recorded.

P. O. LEE, *Register*.

SURVEYOR GENERAL'S OFFICE,
Donaldsonville.

Received in this office this 28th November, 1835, and withdrawn after being copied.

H. T. WILLIAMS,
Surveyor General.

STATE OF LOUISIANA, *parish of Claiborne, ss:*

I, George W. Peets, parish judge in and for the parish of Claiborne, and State of Louisiana, do hereby certify, that the foregoing instrument of writing has been duly recorded in my office, in book notarial marked C, folio 305 and 306, on this 13th day of February, A. D. 1840.

[SEAL.] In faith whereof I have hereunto set my hand and affixed the seal of my office, this 13th day of February, A. D. 1840.

GEO. W. PEETS, *parish judge.*

Document D.

UNITED STATES OF AMERICA,
State of Louisiana, city of New Orleans:

Before me, Lucien Hermann, notary public, in and for this city and parish of Orleans, duly commissioned and sworn, and in the presence of the witnesses hereinafter named and undersigned, personally appeared Felix Huston, of this city, who declared that for the consideration hereinafter expressed he has sold, and does by these presents grant, bargain, sell, convey, transfer, assign, and set over, with a full guaranty against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto James Washington Patton, residing in Buncombe county, State of North Carolina, here present, accepting and purchasing for himself, his heirs, and assigns, and acknowledging delivery and possession thereof, six hundred and forty-nine acres and thirty-six hundredths of an acre of land, situated in the parish of Claiborne, in this State, and fronting on the Red river, being composed of the following tracts, to wit:

Two hundred and sixty-one acres and sixty-eight hundredths of an acre, in fractional section number thirteen - -	261.68
One hundred and fifty-five acres, in fractional section number fourteen - - - - - - - - - - -	155.00
Ninety-one acres and eighteen hundredths of an acre, in fractional section number eleven - - - - - - -	91.18
Seventy-one acres and fifty hundredths of an acre, in southwest fractional quarter of section number twelve - -	71.50
Twenty acres in northwest fractional quarter of fractional sectional section number twelve - - - - - - -	20.00
And the whole lot of number four of section number one, containing fifty acres - - - - - - - -	50.00
All in township nineteen north, range fourteen west.	
Total - - - -	649.36

The above described lands are a part of twelve hundred and eighty acres, which by an act of Congress of the United States of America, approved 30th June, 1834, were granted to General Philemon Thomas without payment, to be located by him or his assigns on any of the lands of the United States within the State of Louisiana, at the proper land office, with a proviso that the same shall be located in tracts of not less than six hundred and forty acres, according to the legal subdivisions; which grant of twelve hundred and eighty acres was on the thirtieth day of January, 1835, by act recorded in the district court for the county of Washington, in the District of Columbia, conveyed by the said Philemon Thomas to George Poindexter, of Mississippi, who transferred his rights to the said grant to the said Felix Huston, by act passed before George W. Keeton, notary public, in the parish of Concordia, in this State, on the twentieth of November, eighteen hundred and thirty-five, and which said land was located by the said Felix Huston according to the provisions of the above mentioned act of Congress, and duly entered in the land office for the district wherein the same are situated.

To have and to hold the said lands unto the said purchaser, his heirs and assigns, to their proper use and behoof, forever. And the said vendor, his heirs and assigns, the said described lands, to the said purchaser, his heirs and assigns, shall and will warrant and forever defend against the lawful claims of all persons whomsoever by these presents. And the said vendor does moreover subrogate the said purchaser to all the rights and actions of warranty, which he has or may have against his own vendor, or against the vendor of his vendor, fully authorizing said purchaser to exercise the said rights and actions, in the same manner as he himself might or could have done.

This sale is made and accepted for and in consideration of the price and sum of six thousand four hundred dollars, which the said purchaser out of the presence of the undersigned notary and witnesses has paid unto the said vendor, who hereby acknowledges receipt thereof, and grants discharge therefor.

The said vendor now declared that the lands herein above described and conveyed are free of all mortgage or encumbrances whatsoever, but that for want of the proper time he has not been able to provide himself with a certificate of the judge, ex officio recorder of mortgages for the parish of Claiborne, as required by law; of which declaration on the part of the said vendor the said purchaser acknowledges himself satisfied, and exonerates me, notary, from all responsibility in consequence of the non-production of said certificate.

The said vendor moreover declared that he is married, but there existing no community of property between himself and his wife, and his said wife having no rights by law on his property, her renunciation is not hereto required.

Thus done and passed in my office, in the city of New Orleans aforesaid, in the presence of Charles La Bedoyere Kernion, junior, and A. Cooper Lewis, witnesses of lawful age, and domicilitated in this city,

who hereunto sign their names, together with the said parties, and me, the said notary, on this tenth day of January, in the year of our Lord one thousand eight hundred and forty-four. "Original signed"

FELIX HUSTON,
JAMES W. PATTON,
LA BEDOYERE KIERNION, Jr.,
A. C. LEWIS.
LN. HERMANN, *Notary Public.*

I certify the foregoing to be a true copy of the original act extant in my current register.

In faith whereof I grant these presents under my signature and the impress of my official seal at the city of New Orleans, State [L. S.] of Louisiana aforesaid, on this eleventh day of January, A. D. 1844.

LN. HERMAN,
Notary Public.

Received and filed on this twenty-seventh day of January, 1844.

WILLIAM K. BECK,
Parish Judge.

And recorded in notarial book marked A, pages 79 and 80.

WILLIAM K. BECK,
Parish Judge.

Document E.

Before me, Lucien Hermann, a notary public duly commissioned and sworn in and for the city of New Orleans, State of Louisiana, therein residing, and in the presence of the witnesses undersigned, personally appeared James Washington Patton, esquire, residing in Buncumbe county, in the State of North Carolina, who declared that he has made and appointed, and does, by these presents, make, nominate, ordain, authorize, constitute, and appoint, and in his place and stead depute and put, James Erwin, esq., a resident of this city, to be his true and lawful attorney in fact, giving, and by these presents granting, unto the said attorney, full power and authority for him, and in his name and behalf, to sell, bargain, convey, transfer, assign, and set over to all or any person or persons whomsoever, for such price and sum, and under such terms and conditions, as to the said attorney shall seem more profitable and advantageous for the interest of the said constituent, and to receive and grant receipt for the price thereof, the following lands, to wit:

Six hundred and forty-nine acres and thirty-six hundredths of an acre of land, situate in the parish of Claiborne, in this State, and fronting on Red river, being composed of the following tracts, to wit:

Two hundred and sixty-one acres and sixty-eight hundredths of an acre in fractional section number thirteen - - -	261.68
One hundred and fifty-five acres in fractional section number fourteen - - - - - - - - - - - -	155.00

Ninety-one acres and eighteen hundredths of an acre in fractional section number eleven - - - - - - 91.18
Seventy-one acres and fifty hundredths of an acre in southwest fractional quarter of section number twelve - - - 71.50
Twenty acres in northwest fractional quarter of fractional section number twelve - - - - - - - - 20.00
And the whole of lot number four, of section number one, containing fifty acres - - - - - - - - 50.00

Total - - - - 649.36

The lands above described are the same which the present constituent acquired by purchase from Felix Huston according to an act passed before the undersigned notary on the tenth day of the present month of January.

And for the full execution of the purposes, to make, sign, and execute in the name of the said constituent, all acts of sale, transfer, and conveyance that shall or may be requisite or necessary, and bind the said constituent thereby as firmly as if the same were or had been his own proper acts and deeds.

And generally to do and perform all and every other act, matter, and thing whatsoever, as shall or may be requisite and necessary in the premises as fully, amply, and effectually, and to all intents and purposes with the same validity, as if all and every such act, matter, or thing were, or had been herein particularly stated, expressed, and especially provided for, or as the said constituent could or might do if personally present; also with full power of substitution or revocation.

And the said constituent hereby agrees to ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done by virtue of this act of procuration.

Thus done and passed in my office at the city of New Orleans, State of Louisiana aforesaid, on this fifteenth day of January, in the year of our Lord one thousand eight hundred and forty-four, in the presence of Charles La Bédoyere Kernion, jr., and A. Cooper Lewis, competent witnesses, who hereunto sign their names with the said appearer and me, notary, after reading the whole. Original signed Jas. W. Patton, La Bédoyere Kernion, jr., A. C. Lewis.

LN. HERMANN, *Not. Pub.*

A true copy of the original on file in my office, New Orleans, the second of March, 1846, two words interlined and one word erased, as well approved.

LN. HERMANN, *Not. Pub.*

Document F.

UNITED STATES OF AMERICA,
State of Louisiana, city of New Orleans:

Before me, Lucien Hermann, notary public in and for this city and parish of Orleans, duly commissioned and sworn, and in the presence

of the witnesses hereinafter named and undersigned, personally appeared James Erwin, esquire, a resident of this city of New Orleans, herein acting for and in the name and on behalf of James Washington Patton, a resident of Buncombe county, in the State of North Carolina, in and by virtue of a special power of attorney, passed in the office of the undersigned notary on the fifteenth day of January, one thousand eight hundred and forty-four, who declared that, for and in the name of his said constituent, and for the consideration hereinafter expressed, he has sold, and does by these presents grant, bargain, sell, convey, transfer, assign, and set over, with full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto James Blair Gilmer, a resident of the parish of Bossier, in this State, here present accepting and purchasing for himself, his heirs and assigns, and acknowledging due delivery and possession thereof, six hundred and forty-nine acres and thirty-six hundredths of an acre of land, situated, lying, and being in the parish of Claiborne, in this State of Louisiana, and fronting on Red river, in said parish, being composed of the following described tracts, to wit:

Two hundred and sixty-one acres and sixty-eight hundredths of an acre in fractional section number thirteen - -	261.68
One hundred and fifty-five acres in fractional section number fourteen - - - - - - -	155.00
Ninety-one acres and eighteen hundredths of an acre in fractional section number eleven - - - -	91.18
Seventy-one acres and fifty hundredths of an acre in southwest fractional quarter of section number twelve - -	71.50
Twenty acres in northwest fractional quarter of fractional section number twelve - - - - -	20.00
And the whole of lot number four, of section number one, containing fifty acres - - - - -	50.00
Total - - - - -	649.36

All in township nineteen north, range fourteen west.

The land herein above described and conveyed belongs to the said James Washington Patton, by means of the purchase he made thereof from Felix Huston, according to an act passed in the office of the undersigned notary, on the tenth day of January, one thousand eight hundred and forty-four.

To have and to hold the said lands unto the purchaser, his heirs and assigns, to their proper use and behoof, forever. And the said vendor, his heirs and assigns, the above described and bargained lands to the said purchaser, his heirs and assigns, shall and will warrant and forever defend, against the lawful claims of all persons whomsoever, by these presents. And the said vendor does, moreover, subrogate the said purchaser to all the rights and actions of warranty which he has or may have against his own vendor, or against the vendors of his vendor, fully

authorising said purchaser to exercise the said rights and actions in the same manner as he himself might or could have done.

The present sale is made and accepted for and in consideration of the total price and sum of six thousand four hundred and ninety-three dollars and sixty cents, (being at the rate of ten dollars per acre;) in part payment and deduction whereof the said James Blair Gilmer has paid cash, in ready current money, in the presence of the undersigned notary and witnesses, the sum of three thousand two hundred and forty-six dollars and eighty cents to the said James Erwin; who, for and in the name of the said constituent, the said James Washington Patton, hereby acknowledges the receipt thereof, and grants full discharge and acquittance therefor.

And for the balance remaining due on the said purchase price, amounting to the sum of three thousand two hundred and forty-six dollars and eighty cents, the said James Blair Gilmer has furnished two certain promissory notes, by himself subscribed, dated this day, and made to the order of James Erwin, each for the sum of one thousand six hundred and twenty-three dollars and forty cents, bearing interest at the rate of six per centum per annum from date until final payment, and both payable at one year after date; which notes, after having been signed and paraphed, "ne varietur," by me, the undersigned notary, to identify the same with these presents, were delivered to the said James Erwin, who for his constituent hereby acknowledges receipt and possession thereof.

And in order to secure the full and punctual payment of the above described two promissory notes at maturity, and all interest thereon, the said James Blair Gilmer hereby affects, mortgages, and hypothecates in favor of the said James Washington Patton, or in favor of any further holder or holders of said note, the lands herein above described and conveyed; hereby binding himself, his heirs and assigns, not to sell or mortgage, deteriorate or incumber, the within mortgaged lands to the prejudice of the present mortgage.

The said James Erwin now declared, that the lands herein above described and conveyed are free of all mortgages or incumbrances whatsoever, and that, for want of proper time, he has not been able to provide himself with a certificate in the name of the said Patton, from the parish judge and ex officio recorder of mortgages in and for the parish of Claiborne, in this State, as required by law; of which declaration on the part of the said James Erwin, acting as aforesaid, the said James Blair Gilmer acknowledges himself satisfied, and hereby exonerates me, notary, from all responsibility to be incurred in consequence of the non-production of said certificate as required by law.

The said Erwin, for and in the name of the said Patton, hereby further guarantees the land above sold to be free from all or any claim or claims of all or any person or persons whomsoever, and the title thereof to be duly and legally vested in said Patton. Therefore the said Erwin, as agent, furthermore guarantees said Gilmer against all troubles, ncumbrances, or evictions whatever; and hereby agrees and binds the

said Patton, in the event of the said purchaser being troubled in the peaceful possession of said land, to pay and defray all expenses which may by him be incurred in resisting any suit which may be brought against him.

Thus done and passed in my office, at the city of New Orleans aforesaid, in the presence of Charles La Bedoyere Kernion, jr., and A. Cooper Lewis, witnesses of lawful age, and domiciliated in this city, who hereunto sign their names, together with the said parties, and me, the said notary, on this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and forty-two.

"Original signed"

J. ERWIN,
J. B. GILMER,
LN. HERMANN, *Not. Pub.*

J. B. GILMER,
LA BEDOYERE KERNION, Jr.

I certify the foregoing to be a true copy of the original act extant on my current register.

In faith whereof I grant these presents, under my signature and impress of my official seal, at the city of New Orleans, State of Louisiana aforesaid, one of the United States of America, on this twenty-ninth day of March, in the year of our Lord one thousand eight hundred and forty-four. Six words interlined approved, viz., *at the rate* * *to be free.*

[SEAL.]

LN. HERMANN, *Not. Pub.*

Received, filed, and recorded on this 18th day of April, A. D. 1844, in notarial book marked A, page 84, 85, and 86.

WM. KING BECK,
Parish Judge.

Document G.

UNITED STATES OF AMERICA,
State of Louisiana, parish of East Baton Rouge:

Before me, Charles W. Crawford, notary in and for the parish of East Baton Rouge, duly commissioned and sworn, personally appeared Philemon Thomas, of the State of Louisiana, and parish of East Baton Rouge, who declared that he has granted, made, constituted, and appointed, and by these presents does make, constitute, and appoint, George Poindexter, esquire, of the State of Mississippi, his true, and lawful, and special attorney, for him, and in his name, and to his use, to locate twelve hundred and eighty acres of land in the State of Louisiana, to be chosen and selected on any part of the public lands in the State of Louisiana, agreeably to the provisions of an act of Congress, passed in favor of the appearer, dated on the thirtieth day of June, in the year of our Lord one thousand eight hundred and thirty-four, attorney *as* attorneys under him to appoint, and at his pleasure to revoke; and, finally, to do all other lawful acts in the premises as fully in every respect as he

could do if personally present; ratifying and confirming whatever his said attorney shall in his name lawfully do, or cause to be done, in and about the premises by virtue of these presents.

In witness whereof the constituent has hereunto signed his name, with me, notary, at Baton Rouge, this fourteenth day of May, in the year of our Lord one thousand eight hundred and thirty-nine, in the presence of Robert N. Ogden and Isadore Lasquier, witnesses; the words "and eighty" approved before signing.

PHILN. THOMAS,
CHS. W. CRAWFORD, *Not. Pub.*

R. N. OGDEN,
ISADORE LASQUIER.

I certify the foregoing to be a true copy of the original filed in my office on the 20th day of May, 1839.

Given under my hand and seal of office, as parish judge in and for the parish of Rapides, on this 11th day of June, 1839.

WILLIAM JOHNSON, *Par. judge.*

NORTHWESTERN LAND OFFICE,
Natchitoches, La., 24th December, 1844.

I do hereby certify the foregoing to be a true copy of a copy on file in my office.

Given under my hand and seal of office, the date above written.

[SEAL.] WM. T. WALMSLEY, *Register*.

And now, at this day, to wit, the day and year first herein written, the judgment in this case was made final, and signed by the judge, to wit:

"This cause having been argued and submitted to the court at a former day of the present term, and the court having maturely considered the same on the law and the evidence, and being now fully advised in the premises, it is ordered, adjudged, and decreed that judgment be rendered in favor of the plaintiff, George Poindexter, and against the defendant, James B. Gilmer, for the premises described in the plaintiff's petition; that the said Gilmer surrender to the plaintiff the possession of the following described parcels of land, to wit: Fractional section No. 13, in township 19 north, of range 14 west; and fractional section 14, in township 19 north, of range 14 west; and fractional section 11, in township 19 north, of range 14 west; and the south-west fractional ¼ of section 12, in township 19 north, of range 14 west; and lot No. 4 of fractional section one, in township 19 north, of range 14 west, containing 649 acres $\frac{88}{100}$ of an acre, and that plaintiff have writ of habere facias possessionem to place him in legal possession thereof. The right of plaintiff to sue for mesne profits, and of defendant to sue for improvements, is reserved to each separately. And it is further ordered that defendant be condemned to pay the costs of suit.

Judgment rendered 10th May, 1848—Signed 28th June, 1848.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Afterwards, to wit, on the 29th day of June, A. D. 1848, the defendant filed the following petition for a writ of error to the Supreme Court of the United States, to wit:

To the honorable the judges of the circuit court of the United States:

The petition of James Blair Gilmer respectfully represents to your honors, that judgment was lately rendered against him in the circuit court of the United States, fifth circuit, for the district of Louisiana, in a certain cause, wherein George Poindexter was plaintiff and your petitioner was defendant.

That there is manifest error of law in the record, proceedings, and judgment of the court in said cause to the prejudice of your petitioner.

Wherefore your petitioner prays that a writ of error be granted him to said circuit court, returnable to the December term, 1848, of your honorable court, to the end that the errors in said record, proceeding, and judgment, if any there be, may be revised and corrected according to law.

R. H. BARKER,
Of counsel for defendant.

And on said petition was endorsed the following fiat, to wit:

Be it so. THEO. H. McCALEB, *U. S. Judge.*

And on the same day of filing said petition, with the fiat of the U. S. judge thereon endorsed, the following writ of error bond was filed, to wit:

Know all men by these presents, that we, James Blair Gilmer, principal, and R. C. Cummings, as sureties, are held and firmly bound unto George Poindexter in the full and just sum of two thousand dollars, to be paid to the said George Poindexter, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 29th day of June, in the year of our Lord one thousand eight hundred and forty-eight.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein the said Poindexter is plaintiff and said Gilmer is defendant, judgment was rendered against the said J. B. Gilmer, the defendant. And the said James Blair Gilmer having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said George Poindexter, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said James Blair Gilmer shall prosecute his said writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JAMES BLAIR GILMER,
Per R. H. BARKER, *Atto. in fact.* [SEAL.]

Endorsed.—Approved June 20th, 1848.

THEO. H. McCALEB,
U. S. Judge.

THE UNITED STATES OF AMERICA,
District of Louisiana:

Circuit court, fifth circuit, clerk's office.

I, Edmund Randolph, clerk of said court, do hereby certify, that the above and forty-one foregoing pages contain a full, complete, and perfect transcript of the record, proceedings, and *and* judgment in [the] case [of] Poindexter vs. Gilmer, as the same is now to be found in said court.

[L. S.] Given under my hand and the seal of said court, at New Orleans, this 4th day of September, A. D. 1848.

EDM'D RANDOLPH, *Clerk.*
By JAS. M. DOWNS, *D. C.*

UNITED STATES OF AMERICA:

Circuit court of the United States, for the fifth circuit and district of Louisiana.

GEORGE POINDEXTER
vs.
JAMES B. GILMER.

I, Theodore H. McCaleb, United States judge for the district of Louisiana, do hereby certify, that Edmund Randolph, whose name is signed to the above certificate, as clerk of the circuit court of the United States for the district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

I further certify, that James M. Downs, who signed said Edmund Randolph's name as clerk, was at the time of signing the same, the duly appointed and qualified deputy clerk of said Edmund Randolph.

Given under my hand and seal, at New Orleans, in the District of Louisiana, this 4th day of September, A. D. 1848.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Citation in error.

The United States of America, to George Poindexter, or Logan Hunton, his attorney of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the 1st Monday of December next, pursuant to a writ of error filed in

the clerk's office of the circuit court of the United States, for the fifth circuit and district of Louisiana, wherein James B. Gilmer is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 4th day of September, in the year of our Lord one thousand eight hundred and forty-eight.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

Marshal's return.

Received October 11th, 1848, and on 30th October, 1848, served a copy of the within citation in error on George Poindexter, by handing the same to L. Hunton, esq., in person, at New Orleans.

WM. SHEARER,
D'y U. S. Marshal.

Writ of error, to operate as supersedeas.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between George Poindexter, plaintiff, and James Blair Gilmer, defendant, a manifest error hath happened to the great damage of said defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this fifth of July, in the year of our Lord one thousand eight hundred and forty-eight.
[SEAL.]

E. RANDOLPH,
Clerk of the U. S. circuit court and district of Louisiana.
By JAS. M. DOWNS, *Dep. Clerk.*

This writ of error to operate as a supersedeas, bond with security approved by the court having been given according to law.

E. RANDOLPH, *Clerk*.
By JAS. M. DOWNS, *D. C.*

United States circuit court.

POINDEXTER vs. GILMER. } No. 1576. Writ of error to operate as supersedeas.

Copy of the writ of error lodged in the clerk's office of the circuit court of the United States, for the fifth circuit and district of Louisiana, in pursuance [of] the statute in such cases made and provided, this 5th day of July, 1848.

By R. H. BARKER,
Attorney of plaintiff in error.

Attest: E. RANDOLPH, *Clerk*.
By JAS. M. DOWNS, *D. C.*

Filed 5th July, 1848.

J. M. DOWNS, *D. C.*

UNITED STATES OF AMERICA:

Circuit court, fifth circuit, and district of Louisiana; clerk's office, New Orleans.

In obedience to the commands of this writ of error, I transmit to the Supreme Court of the United States a full and complete transcript of the record proceedings and judgment in the case stated.

New Orleans, September 4th, 1848.

[SEAL.] EDM'D RANDOLPH, *Clerk*.
By JAS. M. DOWNS, *D'y Clerk*.

JAMES B. GILMER, plaintiff in error, vs. GEORGE POINDEXTER, defendant in error. }

And the said James B. Gilmer, by his attorney, John Henderson, comes and shows to the Supreme Court of the United States, that in the record and proceedings aforesaid, prosecuted by George Poindexter against the said Gilmer, in the circuit court of the United States for the district of Louisiana, manifest error has intervened, in this, to wit:

1st. That upon the whole case made by the record, the judgment of the circuit court of Louisiana was given for the said Poindexter, when it should have been given for the said Gilmer.

2d. That it does not appear from said record, either by averment of the petition or by the judgment of recovery, that the property sued for was of sufficient value to give said circuit court jurisdiction of the case.

3d. The court below erred in refusing to allow the defendant, Gilmer, to show the value of his ameliorations and improvements put upon